

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF DOUGLAS

THIS AGREEMENT is entered into 30 January, 2002, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF DOUGLAS, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 11-952 to enter into this agreement and has by ordinance, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, transportation enhancements including roadside attractions of historic preservation.

4. Such project within the boundary of the City has been selected by the City; the survey of the project has been completed; and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The City, in order to obtain federal funds for the acquisition of right of way for the project, is willing to advance City funds, complete the acquisition of right of way prior to the State advertising for construction.

NO. 25124

Filed with the Secretary of State

Date Filed: 01/30/02

Betsy Bayless

Secretary of State

By Vicky D. Greenwald

7. The work embraced in this agreement, to be administered by the City, and the estimated costs are as follows:

| | |
|-------------------------------------------|--------------|
| Right of Way Acquisition | |
| Estimated Project Cost | \$330,000.00 |
| Federal Aid Funds @ 94.3% of \$330,000.00 | \$311,190.00 |
| City Funds @ 5.7% of \$330,000.00 | \$ 18,810.00 |

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for acquisition.

a. If such project is approved by FHWA and the funds are available for the project, the City with the aid and consent of the State and the FHWA will proceed to acquire the right of way necessary for the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the FHWA. The State will enter into a Project Agreement with FHWA covering the work embraced in said right of way acquisition and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the City shall be obligated to incur any expenditure in excess.

2. Prior to the commencement of right of way acquisition, the City shall set aside sufficient funds in the amount determined to be necessary to match federal funds in the ratio required.

3. Upon completion of right of way acquisition, the City shall provide the State with a Temporary Construction Easement for the construction of the State project of a pedestrian pathway and landscaping. The City shall provide at its own cost and as an annual item in its budget, appropriate and proper maintenance.

4. The City shall allow public access to the completed project and grounds during normal business hours.

5. The City will provide personnel to supervise the acquisition of right of way.

6. The City will complete the acquisition project in accordance with the requirements of the relevant State and federal statutes, rules, or regulations. In the event the City fails to comply with any relevant State or federal statutes, rules, or regulations, the City shall hold the State harmless from any claims or costs incurred by the State as a result of the City's failure to comply.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the project, any engineering in connection therewith, cost over-runs and claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property

whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the right of way acquisition covered by this agreement is to be borne by FHWA and City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:


Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007

City of Douglas
City Manager
425 10th Street
Douglas, AZ 85607


9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.


CITY OF DOUGLAS

By 
RAY BORANE
Mayor

STATE OF ARIZONA
Department of Transportation

By 
WILLIAM J. HIGGINS, P.E.
Deputy State Engineer

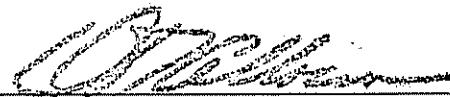
ATTEST

for By 
LETICIA G. RODRIGUEZ
City Clerk

RESOLUTION

BE IT RESOLVED on this 11th day of December, 2001, that I, the undersigned VICTOR M. MENDEZ, as Director of the ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the STATE OF ARIZONA that the DEPARTMENT OF TRANSPORTATION, acting by and through the INTERMODAL TRANSPORTATION DIVISION, enter into an agreement with the CITY OF DOUGLAS, for the purpose of defining responsibilities for the State to assist in facilitating the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer or higher for approval and execution.



DAVID R. ALLOCCO, PE
Assistant State Engineer
Engineering Technical Group

for MARY E. PETERS, Director

Resolution No. 01-231

A RESOLUTION OF THE MAYOR AND COUNCIL
OF THE CITY OF DOUGLAS, ARIZONA,
AUTHORIZING THE EXECUTION OF THE
INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF DOUGLAS AND
ARIZONA DEPARTMENT OF
TRANSPORTATION REGARDING FUNDING
FOR THE PURCHASE OF THREE PARCELS OF
VACANT LAND LOCATED WEST OF PAN
AMERICAN AVENUE BETWEEN THE
INTERNATIONAL BORDER AND 14TH STREET,
IN DOUGLAS, ARIZONA, FOR THE PASEO DE
LAS AMERICAS PARK.

WHEREAS, the City of Douglas has entered into an agreement with the Arizona Department of Transportation to apply for funding from the Federal Highway Administration (FHWA) for the purchase of three parcels of vacant land located west of Pan American Avenue between the international border and 14th Street in Douglas, Arizona, for the Paseo De Las Americas Park; and

WHEREAS, the Intergovernmental Agreement providing the terms and conditions of said agreement entered into by the parties is attached in Exhibit "A", and incorporated herein by reference; and

BE IT RESOLVED, by the City Council of the City of Douglas as follows:

Section 1. The terms of said Intergovernmental Agreement are in the best interest of the City of Douglas

Section 2. The City Manager and City Clerk are hereby authorized to execute and deliver the Intergovernmental Agreement (attached as Exhibit "A") and any related documents necessary to consummate the transaction contemplated by Intergovernmental Agreement for and on behalf of the City of Douglas.

Section 3. The officers of the City Council and the City of Douglas are hereby authorized and directed to fulfill all obligations under the terms of Intergovernmental Agreement

PASSED AND ADOPTED by the Mayor and Council of the City of Douglas, Arizona, this 26th day of December, 2001.

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By Ray Borane
Ray Borane, Mayor

Attest:

By Leticia G. Rodriguez
Leticia G. Rodriguez, City Clerk

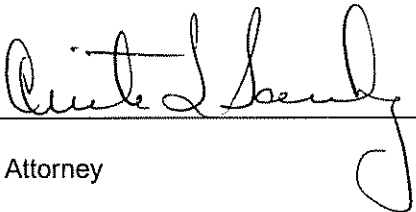
Approved as to Form:

Anita L. Sanchez
Anita L. Sanchez, City Attorney

APPROVAL OF THE CITY OF DOUGLAS ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF DOUGLAS and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 26th day of December, 2001.



City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ 85007-2926

JANET NAPOLITANO
ATTORNEY GENERAL

TRN Main: (602) 542-1680

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MAIN PHONE : (602) 542-5025

FACSIMILE : (602) 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No KR01-2409TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED: January 14, 2002.

JANET NAPOLITANO
Attorney General

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:ggt

721026

Enc.